IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.995/99

Babulal

Versus

Brijmohan Sharma & Ors.

DATE OF ORDER :: 07/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. S.K. Jain, for petitioner
Mr. Arun Sharma, P.P.

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Instant petition has been filed by complainant-petitioner assailing the order whereby learned trial Judge took cognizance against the accused-respondents on the premise that since they were discharging official duties and in the absence of prior sanction u/s.197 Cr.P.C. by the competent authority, no cognizance can be taken against them and the revision petition preferred by petitioner against the said order was also dismissed by the Revisional Court vide order dated 5th August, 1999.

Petitioner filed a complaint on 26th December, 1982 in which it was alleged that Brijmohan Sharma [ACTO], who was one of the Officer of Commercial Taxes Department along with other employees came to his field and took away his chilly lying there and accordingly, they have committed an offence u/s.379 IPC. After they were summoned, they filed their objection stating

inter alia that no cognizance can be taken against them without seeking prior permission from the competent authority u/s.197 Cr.P.C., but that was rejected by learned trial Judge and he took cognizance against them. Against which revision petition was preferred, which was allowed on 18th September, 1995 and the matter was remanded back to learned trial Judge to examine their objection raised afresh in accordance with law.

Learned trial Judge after the matter was remitted, re-considered the matter and declined to take cognizance against the accused-respondents on the premise that in the absence of prior sanction provided u/s.197 Cr.P.C., no cognizance can be taken against them – against said order the complainant-petitioner filed revision petition that was dismissed by Revisional Court vide order dated 5th August, 1999. Hence, the present petition.

The respondents herein in their written objection submitted that there was a tax which was due of Rs.3640/- and demand notice was issued, but since he failed to deposit the same in reference of demand notice, attachment was ordered and his chilly was attached and this action on their part was in discharge of official duties as such without seeking prior permission, cognizance cannot be taken against them which

found favour by learned Magistrate and the Revisional Court also dismissed the revision petition preferred by complainant-petitioner.

I have considered the submission of both the counsel and perused the order impugned.

This court is of the view that the act of respondents was in discharge of official duties and prior sanction of the competent authority provided u/s.197 Cr.P.C. is pre-condition for taking cognizance against them and does not find any error committed by learned trial Judge in passing said order.

Consequently, this court finds no force in the misc. petition, the same stands dismissed, along with Stay Petition No.788/99.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.